

Facility, as the case may be, and all other amounts due under the Lease Indenture as of such proposed date of termination.

## SECTION 11. INSURANCE

*Section 11.1. Property Insurance.* The Facility Lessee will, subject to Section 11.6, maintain (or cause to be maintained) all risk property insurance customarily carried by prudent operators of electric generating facilities of comparable size and risk of the Facility, and against loss or damage from such causes as are customarily insured against, which includes coverage for boiler and machinery, and, in any case, subject to availability on commercially reasonable terms, in an amount equal to the Maximum Probable Loss of the Facility, subject to a deductible, as to the Facility Lessee's interest, not to exceed \$5 million per occurrence for property damage or such other higher amounts customarily maintained by prudent operators of electric generating facilities of comparable size and risk of the Facility.

*Section 11.2. Liability Insurance.* The Facility Lessee will, subject to Section 11.6, maintain (or cause to be maintained) commercial general liability insurance, including sudden and accidental pollution liability coverage, contractual liability coverage, and commercial automobile liability insurance, insuring against claims for bodily injury (including death) and property damage to third parties arising out of the ownership, operation, maintenance, condition and use of the Facility and the Facility Site, with limits not less than \$35 million per occurrence/aggregate with a deductible not to exceed \$5 million per occurrence, as to the Facility Lessee's interest, or such other higher amount customarily maintained by prudent operators of electric generating facilities of comparable size and risk of such Facility. The Facility Lessee will periodically review the liability insurance maintained by it or on its behalf and will, if necessary, revise such coverage and limits (including deductibles) in order that the liability insurance maintained by it or on its behalf is consistent with that maintained by prudent operators of similar facilities of comparable size and risk to the Facility; *provided* that the Facility Lessee may not (except as permitted by Section 11.6) increase deductibles above or decrease coverage or limits below the amounts specified herein without the written consent of the Owner Lessor, which such consent shall not be unreasonably withheld or delayed. Such liability insurance may be purchased either in a single limit or in combination with a general and an excess policy.

### *Section 11.3. Provisions with Respect to Insurance.*

(a) The Facility Lessee will, subject to Section 11.6, place the insurance maintained pursuant to this Section 11 with companies having an A.M. Best rating of at least "A-" or, if not so rated, of comparable financial strength. All insurance policies required to be maintained pursuant to Section 11.2 shall name the Owner Lessor, the Lessor Manager, the Trust Company, the Owner Participant, the sole member of the Owner Participant and any other entity in the chain of ownership up to and including the Equity Investor (so long as the Owner Participant provides the Facility Lessee with the name of each such entity) and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee (collectively, the "Additional Insured Parties") as additional insureds, as their interests may appear. All insurance policies required to be maintained pursuant to this Section 11 shall also provide for at least 30 days' prior written notice (10 days for non-payment) by the insurance

carrier to the Additional Insured Parties in the event of cancellation, non-renewal, termination, expiration or material change. The Facility Lessee will place the insurance required by this Section 11 with insurance companies that agree to waive all claims for premiums from, and all subrogation rights against, the Additional Insured Parties. All the insurance maintained pursuant to this Section 11.3 shall be primary without right of contribution of any other insurance carried by or on behalf of the Additional Insured Parties with respect to their respective interests in the Facility, and the Facility Site.

(b) The Facility Lessee will, subject to Section 11.6, use its reasonable efforts to provide that the respective interests of the Additional Insured Parties shall not be invalidated by any act or neglect of the Facility Lessee, or any breach or violation by the Facility Lessee of any warranties, declarations or conditions contained in such policies or by the use of the Facility for purposes more hazardous than permitted by such policies. Additionally, the Facility Lessee will, subject to Section 11.6, use its reasonable efforts to provide that the liability policies required to be maintained pursuant to Section 11.2 shall be endorsed to provide that, inasmuch as the policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the manner as if there were a separate policy covering each insured. The Facility Lessee shall, at its own expense, make or cause to be made all proofs of loss and take all other steps necessary to collect the proceeds of such insurance.

*Section 11.4. Reports.* The Facility Lessee shall provide annually at the time it delivers the officers certificate pursuant to Section 5.4 of the Participation Agreement (i) the Owner Lessor, the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees certificates from insurance brokers or carriers to the effect that such policy is in effect and in the case of policies maintained pursuant to Sections 11.1 and 11.2, indicating their status as additional insureds and (ii) an Officer's Certificate of the Facility Lessee certifying that (i) all premiums in respect of such policies are current and (ii) that such coverage is in compliance with all insurance requirements set forth in this Section 11.

*Section 11.5. Additional Insurance by Owner Lessor.* At any time the Owner Lessor (either directly or in the name of the Owner Participant), the Owner Participant (or its Affiliates) or the Lease Indenture Trustee may at its own expense and for its own account carry insurance with respect to its interest in the Facility; *provided*, that such insurance does not in any way interfere with the Facility Lessee's ability to obtain insurance required to be maintained under this Section 11. Any insurance payments received from policies maintained by the Owner Lessor, the Owner Participant or the Lease Indenture Trustee pursuant to the previous sentence shall be retained by the Owner Lessor, the Owner Participant or the Lease Indenture Trustee, as the case may be, without reducing or otherwise affecting the Facility Lessee's obligations hereunder.

*Section 11.6. Amendment of Requirements.*

(a) If any insurance required to be maintained by the Facility Lessee pursuant to this Section 11 (including the limits or deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis, the Facility Lessee shall

provide written notice to the Owner Lessor and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee accompanied by a letter from the Facility Lessee's insurance broker stating that such insurance is unavailable on a commercially reasonable basis. Such notice shall be given not less than thirty (30) days prior to the scheduled date for renewal of any such policy. Upon receipt of such notice by the Owner Lessor, the Owner Lessor and the Facility Lessee shall immediately enter into good faith negotiations in order to obtain an alternative to such insurance.

(b) In the event that the Owner Lessor and the Facility Lessee cannot reach a resolution acceptable to both parties within ten (10) days, the Owner Lessor and the Facility Lessee shall make arrangements for the formation of an insurance panel consisting of the Facility Lessee's insurance advisor (or broker), the Owner Lessor's insurance advisor (or broker) and an independent insurance expert from a nationally recognized insurance brokerage firm, chosen by the Facility Lessee and reasonably acceptable to the Owner Lessor. Such independent expert shall conduct a separate review of the relevant insurance requirements of this Section 11 and the market for such insurance at the time, giving due consideration to the representations of both insurance advisors, and upon conclusion of such review shall issue a written report stating whether such insurance is available or unavailable on a commercially reasonable basis.

(c) If the insurance expert concludes that such insurance is not available on a commercially reasonable basis, the insurance expert shall provide a written recommendation (which shall include the amount and type of insurance which is available upon a commercially reasonable basis) not less than fifteen (15) days before the date for renewal of such insurance. The Facility Lessee shall, prior to the expiration of the insurance then in effect, obtain the insurance required by this Section 11 that is available on a commercially reasonable basis. If the credit rating of the Lessee Guarantor (or, if there is no Lessee Guarantor, of the Facility Lessee) is at least BBB- and Baa3 by S&P and Moody's, respectively, at the time of renewal, the recommendation of the insurance expert shall be conclusive and binding upon the Facility Lessee and the Facility Lessee shall, for the immediately succeeding one (1) year policy period, only be required to carry the insurance required by this Section 11 that the expert has certified is available on a commercially reasonable basis.

(d) If the credit rating of the Lessee Guarantor (or, if there is no Lessee Guarantor, of the Facility Lessee) is below the rating specified in clause (c) at such time of renewal and in the Owner Participant's reasonable judgment, keeping the insurance coverage at the level that is available on a commercially reasonable basis is reasonably likely to result in a Material Adverse Effect, then the Facility Lessee shall (i) obtain the insurance required by Section 11 whether or not available on a commercially reasonable basis or (ii) obtain the insurance that is available on a commercially reasonable basis and provide collateral or credit support for the difference of a type and in an amount satisfactory to the Owner Participant. For the purposes of this Section 11.6, insurance will be considered "not available on a commercially reasonable basis" if it is not obtainable or obtainable only at excessive costs which are not justified in terms of the risk to be insured and is generally not being carried by or applicable to projects or operations similar to the Facility because of such excessive costs.

(e) All fees, costs and expenses associated with the insurance panel (including the review by the insurance expert) shall be for the sole account of the Facility Lessee.

*Section 11.7. Application of Insurance Proceeds.*

(a) All proceeds of the insurance maintained pursuant to Section 11.1 hereof and Section 11.1 of the Other Facility Lease up to \$50,000,000 on account of any damage to or destruction of the Facility and/or the Other Facility or any part thereof (in each case less the actual costs, fees and expenses incurred in the collection thereof), shall, subject to Section 11.7(d), be paid to or retained by the Facility Lessee for application in repair or replacement of the affected property. All proceeds of the insurance maintained pursuant to Section 11.1 hereof and Section 11.1 of the Other Facility Lease in excess of \$50,000,000 on account of such damage or destruction to the Facility or the Other Facility, shall be paid to the Owner Lessor or, if the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and be applied and dealt with as set forth in this Section 11.7.

(b) All such proceeds actually received on account of any such damage or destruction other than in connection with an Event of Loss shall, unless a Significant Lease Default or a Lease Event of Default shall have occurred and be continuing, be paid over to the Facility Lessee or as it may direct from time to time as restoration progresses, to pay (or reimburse the Facility Lessee for) the cost of restoration, if the amount of such proceeds received by the Lease Indenture Trustee or the Owner Lessor, together with such additional amounts, if any, theretofore expended by the Facility Lessee out of its own funds for such restoration, are sufficient to pay the estimated cost of completing such restoration, but only upon receipt by the Owner Lessor and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee of a written application of the Facility Lessee accompanied by an Officer's Certificate of the Facility Lessee setting forth in reasonable detail the nature of such restoration, the actual cash expenditures made to date for such restoration and the estimated cost to complete such restoration and stating that no Significant Lease Default or Lease Event of Default has occurred and is continuing.

(c) All such proceeds received or payable on account of an Event of Loss shall, unless the Facility Lessee has elected to rebuild or replace the affected Facility, be dealt with in accordance with Section 10.2(d).

(d) Notwithstanding the foregoing provisions of this Section 11 or Section 10, so long as a Significant Lease Default or Lease Event of Default shall have occurred and be continuing, the proceeds of any insurance required to be maintained pursuant to this Section 11 that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Facility Lessee pursuant to this Section 11 or Section 10.2(d) will be held as security for the obligations of the Facility Lessee under this Facility Lease by the Owner Lessor or, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and, at such time thereafter as no Significant Lease Default or Lease Event of Default shall be continuing, such amount shall be paid promptly to the Facility Lessee.

**SECTION 12. INSPECTION**

During the Facility Lease Term, each of the Owner Participant, the Owner Lessor, and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees and their representatives may, during normal

business hours, on reasonable notice to the Facility Lessee and at their own risk and expense (except, at the expense but not risk, of the Facility Lessee when a Significant Lease Default or a Lease Event of Default has occurred and is continuing), inspect the Facility and the records with respect to the operations and maintenance thereof, in the Facility Lessee's custody or to which the Facility Lessee has access so long as the Facility Lessee has the opportunity to be present; *provided, however*, that so long as no Significant Lease Default or Lease Event of Default shall have occurred and be continuing, each such Person shall only be entitled to make one inspection in any twelve- (12-) month period, *provided, further, however*, that any such Person may make more than one inspection during the last eighteen (18) months of the Facility Lease Term unless the Facility Lessee has exercised its option under Section 15 to renew this Facility Lease beyond such eighteen- (18-) month period. Any such inspection will not unreasonably disturb or interfere with the normal operation or maintenance of the Facility or the conduct by the Facility Lessee of its business and will be in accordance with the Facility Lessee's and the Operator's safety and insurance programs. In no event shall the Owner Lessor, the Owner Participant, the Lease Indenture Trustee or the Pass Through Trustees have any duty or obligation to make any such inspection and such Persons shall not incur any liability or obligation by reason of not making any such inspection.

#### SECTION 13. TERMINATION OPTION FOR BURDENSOME EVENTS

*Section 13.1. Election to Terminate.* On or after the occurrence of either of the events specified below, the Facility Lessee shall have the right, at its option, upon at least 30 days' prior written notice to the Owner Lessor, the Owner Participant, and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees, to terminate this Facility Lease in whole on the Termination Date specified in such notice (which shall be a date occurring not more than 90 days after the date of such notice or such longer period (not to exceed twelve (12) months) as may be required to effect the consummation of such termination) if:

(a) as a result of a change in Applicable Law, it shall have become illegal for the Facility Lessee to continue this Facility Lease or for the Facility Lessee to make payments under this Facility Lease or the other Operative Documents, and the transactions contemplated by the Operative Documents cannot be restructured to comply with such change in law in a manner acceptable to the Facility Lessee, the Owner Participant, the Owner Lessor, and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees; or

(b) one or more events outside the control of the Facility Lessee or any Affiliate thereof shall have occurred that will, or can reasonably be expected to, give rise to an obligation by the Facility Lessee to pay or indemnify in respect of the Tax Indemnity Agreement or Section 9.1 or 9.2 of the Participation Agreement; *provided*, that (i) such indemnity obligation (and the underlying cost or Tax) can be avoided in whole or in part if this Facility Lease is terminated and the Owner Lessor sells the Owner Lessor's Interest and (ii) the amount of such avoided payments hereunder would exceed (on a present value basis, discounted at the Discount Rate, compounded on an annual basis to the date of the termination) three percent of the Purchase Price, and *provided, further*,

that no such termination option shall exist if the applicable indemnitee shall waive its right to, or the Owner Participant shall arrange, in its sole discretion, for payment of (without reimbursement by the Facility Lessee or any Affiliate thereof), amounts of indemnification payments under the Tax Indemnity Agreement or Section 9.1 or 9.2 of the Participation Agreement in excess of such amount as to cause such avoided payments, computed in accordance with the preceding proviso, not to exceed three percent of the Purchase Price.

No termination of this Facility Lease pursuant to this Section 13.1 shall become effective unless the conditions set forth in Section 13.5 are satisfied. If the Facility Lessee does not give notice of its exercise of the termination option under this Section 13.1 within twelve (12) months of the date the Facility Lessee receives notice or first has Actual Knowledge of an event or condition described above, the Facility Lessee will lose its right to terminate this Facility Lease pursuant to this Section 13.1 as a result of such event or condition.

*Section 13.2. Solicitation of Offers; Payments Upon Termination.* (a) Upon receipt of a termination notice from the Facility Lessee pursuant to Section 13.1, the Owner Lessor may, but shall be under no obligation to, sell the Owner Lessor's Interest and, at the request of the Owner Lessor, the Facility Lessee will, as non-exclusive agent for the Owner Lessor, use commercially reasonable efforts to obtain cash bids in an amount equal to Termination Value for the Owner Lessor's Interest. In connection with such termination, the Facility Lessee may, but shall be under no obligation to, make an offer to purchase the Facility and shall have a right of first refusal with respect to any offer received from an unaffiliated third party (which may be exercised any time prior to the Termination Date), in connection with such sale. Only bona fide bids, whether from the Facility Lessee or a third party, to purchase the Facility for cash on the applicable Termination Date on an "as is, where is" and "with all faults" basis without any representation, other than by such Owner Lessor that the Facility is free of Owner Lessor's Liens and a warranty of the Owner Participant as to the absence of Owner Participant's Liens, shall be "Qualifying Cash Bids". All the proceeds of any such sale shall be for the account of such Owner Lessor. The Owner Lessor shall be under no obligation to accept any Qualifying Cash Bid. If the Owner Lessor receives any Qualifying Cash Bids, the Owner Lessor shall be deemed to have accepted the highest such bid received by 10 Business Days prior to the Termination Date unless the Owner Lessor rejects such bid and elects to retain the Owner Lessor's Interest in writing prior to the earlier of (x) the expiration date of such bid and (v) the date at least 45 days (15 days if the Facility Lessee has given less than 60 days notice of its election to terminate pursuant to Section 13.1(a)) prior to the applicable Termination Date. Notwithstanding anything herein to the contrary, the Owner Lessor may not elect to retain the Facility unless it shall have provided the Facility Lessee with financial assurance reasonably satisfactory to the Facility Lessee that it will satisfy all of its payment obligations under this Section 13. If the Owner Lessor accepts or is deemed to have accepted a Qualifying Cash Bid from the Facility Lessee, the Facility Lessee shall pay the Owner Lessor on the Termination Date (a) the amount of such Qualifying Cash Bid plus (b) all amounts due and payable under the first sentence of Section 13.2(b), including the amounts payable under clause (a) and (b) of Section 13.3 (but shall have no obligation to pay Termination Value).

(b) If the Owner Lessor accepts (or is deemed to have accepted) any Qualifying Cash Bid, which results in a sale of the Facility on the Termination Date, the Facility



Lessee shall pay the Owner Lessor on the Termination Date (i) the amount, if any, by which the Termination Value determined as of the Termination Date exceeds the sales price of such Qualifying Cash Bid received by the Owner Lessor (or the Lease Indenture Trustee), whether from the Facility Lessee or a third party (net of the fees, commissions and costs of any broker engaged by the Facility Lessee or any Affiliate thereof), plus (ii) all other amounts due and payable under clauses (a) and (b) of Section 13.3 (but shall have no obligation to pay Termination Value); *provided, however*, that prior to any sale or conveyance to any third party, the Facility Lessee shall have given the applicable notice, if any, required by the Exempt Facilities Agreement or obtained a waiver thereof. If the Owner Lessor rejects all Qualifying Cash Bids, then on the Termination Date, the Facility Lessee shall pay the Owner Lessor on the Termination Date (i) the amount, if any, by which the Termination Value determined as of the Termination Date exceeds the sales price of the highest Qualifying Cash Bid, whether from the Facility Lessee or a third party, *plus* (ii) all other amounts due and payable under clauses (a) and (b) of Section 13.3 (but shall have no obligation to pay Termination Value).

(c) If no Qualifying Cash Bids are received by the Termination Date or if a Qualifying Cash Bid is accepted (or deemed accepted) by the Owner Lessor but does not, other than as a result of the Owner Lessor's failure to transfer the Owner Lessor's Interest free and clear of Owner Lessor's Liens or the Owner Participant's failure to provide a warranty as to the absence of Owner Participant's Liens, result in a sale of the Facility, the Owner Lessor may elect in writing to retain the Facility and require the Facility Lessee to pay to the Owner Lessor on the Termination Date all amounts due and payable under clauses (a) and (b) of Section 13.3 (but not Termination Value); *provided, however*, that the Owner Lessor may not elect to retain the Facility unless it shall pay the principal and interest on the Lessor Notes in full. If no Qualifying Cash Bids are received or a Qualifying Cash Bid is accepted (or deemed accepted) but does not result in a sale of the Facility, the Facility Lease shall continue as described in the penultimate sentence of Section 13.3, unless the Owner Lessor affirmatively elects by written notice to the Facility Lessee to retain the Facility and pays the principal and interest on the Lessor Notes in full.

*Section 13.3. Procedure for Exercise of Termination Option.* If the Facility Lessee shall have exercised its option to terminate the Facility Lease under Section 13.1, on the Termination Date specified in the Facility Lessee's notice of such exercise, the Facility Lessee shall pay to the Owner Lessor (a) all amounts of Supplemental Lease Rent (including all reasonable out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant, the Lease Indenture Trustee and the Pass Through Trustees, all sales, use, value added and other Taxes required to be indemnified by the Facility Lessee pursuant to Section 10.2 of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 13 and all indemnity amounts not obviated by the termination) due and payable on or prior to the Termination Date, and (b) any unpaid Periodic Lease Rent due before such Termination Date, but shall not be required to pay Termination Value (except for the portion thereof expressly payable under Section 13.2(b)). All Rent payments under Section 13.2 and this Section 13.3 shall, to the extent required by Section 3.5(a), be made to the Lease Indenture Trustee. Upon payment of all sums specified in Section 13.2 and this Section 13.3 (i) Allocated Rent shall cease to accrue and the obligation to pay Periodic Lease Rent and Renewal Lease Rent shall cease, (ii) the Facility Lessee shall cease to have any liability to the Owner Lessor hereunder or under the other Operative Documents, except for Supplemental Lease Rent and other obligations

(including those under Sections 9.1 and 9.2 of the Participation Agreement and the Tax Indemnity Agreement) surviving pursuant to the express terms of any Operative Document, (iii) unless the Facility Lessee assumes the Lessor Notes pursuant to Section 13.4, the Owner Lessor shall pay the outstanding principal and accrued interest on the Lessor Notes pursuant to Section 2.10(a) of the Lease Indenture, (iv) this Facility Lease shall terminate, (v) the Owner Lessor shall, at the Facility Lessee's cost and expense, execute and deliver to the Facility Lessee a release or termination of this Facility Lease, (vi) in connection with any sale of Owner Lessor's Interest pursuant to Section 13.2, the Owner Lessor shall transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Owner Lessor and prepared by and at the expense of the Facility Lessee) all of its right, title and interest in and to the Owner Lessor's Interest to the purchaser pursuant to this Section 13.3 on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Owner Lessor's Liens and a warranty of the Owner Participant as to the absence of Owner Participant's Liens, and (vii) the Owner Lessor shall use all reasonable efforts to cause the Lease Indenture Trustee to discharge the Lien of the Lease Indenture and to execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepared, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee. It shall be a condition of the termination of this Facility Lease pursuant to this Section 13 that the Facility Lessee shall pay all amounts it is obligated to pay under Section 13.2 and this Section 13.3. If the Facility Lessee fails to consummate the termination option under this Section 13 after giving notice of its intention to do so, (i) the Facility Lease shall continue, (ii) such failure to consummate shall not constitute a default under the Facility Lease, and (iii) unless such failure is a consequence of a failure of the Owner Lessor or Owner Participant to fulfill their obligations under this Section 13, the Facility Lessee will lose its right to terminate this Facility Lease pursuant to this Section 13 as a result of such event or condition during the remainder of the Facility Lease Term. Whether or not the Facility Lease is terminated, the Facility Lessee shall in any event pay all reasonable out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant, the Lease Indenture Trustee and the Pass Through Trustees in connection with the exercise by the Facility Lessee of its right to terminate this Facility Lease under this Section 13.

*Section 13.4. Assumption of the Lessor Notes.* Notwithstanding the provisions of Section 13.2, if (a) the Facility Lessee submits a Qualifying Cash Bid, and the Owner Lessor accepts (or is deemed to have accepted) such Qualifying Cash Bid, (b) the Facility Lessee (or its designee) shall have executed and delivered an assumption agreement to assume in full the Lessor Notes as permitted by and in accordance with Section 2.10(b) of the Lease Indenture, (c) all other conditions contained in such Section 2.10(b) shall have been satisfied, and (d) no Lease Event of Default shall have occurred and be continuing after giving effect to such assumption, then the obligation of the Facility Lessee to pay the sum of (x) the purchase price set forth in its Qualifying Cash Bid plus (y) the excess of Termination Value as of the Termination Date over such purchase price shall be reduced by the outstanding principal amount of and accrued interest on the Lessor Notes so assumed by the Facility Lessee.

*Section 13.5. Certain Conditions to Termination.* Anything to the contrary in this Section 13 notwithstanding, the Facility Lessee and the Owner Lessor agree for the benefit of the Lease Indenture Trustee (without relieving the Owner Lessor of any liability hereunder) that, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, no



termination of this Facility Lease pursuant to this Section 13 shall be effective and the Facility Lessee's rights and obligations under this Facility Lease immediately prior to the electing to terminate this Facility Lease pursuant to Section 13.1 shall remain in full force and effect in all respects (regardless of whether the Owner Lessor shall elect to retain or sell the Facility in connection with such proposed termination) unless and until the Facility Lessee shall have assumed the Lessor Notes pursuant to Section 13.4 or the Owner Lessor shall have paid all outstanding principal and accrued interest on the Lessor Notes pursuant to Section 13.3 and all other amounts due under the Lease Indenture on such proposed date of termination.

#### SECTION 14. TERMINATION FOR OBSOLESCENCE

*Section 14.1. Termination.* During the Basic Lease Term and upon at least six months' prior written notice to the Owner Lessor, the Owner Participant and, so long as the Lien of the Lease Indenture has not been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees (which notice shall be accompanied by a certification by the board of managers (or the equivalent thereof) of the Facility Lessee as to one or more of the matters described in clause (a) and (b) below and an Officer's Certificate setting forth in reasonable detail the basis on which it is exercising this termination option (which in the case of a termination under clause (a) below with respect to one Unit only shall contain a certification that the condition causing such Unit to be obsolete does not exist with respect to the other Unit), the Facility Lessee shall have the option, so long as no Lease Event of Default shall have occurred and be continuing, to terminate this Facility Lease in whole (in the case of clause (b) below) or with respect to any Unit (in the case of, and to the extent provided in, clause (a) below) on any Termination Date occurring on or after the sixth anniversary of the Closing Date (the date of termination selected by the Facility Lessee being the "Obsolescence Termination Date") on the terms and conditions set forth in this Section 14 if the Facility Lessee's board of managers determines in good faith that:

(a) such Unit is economically or technologically obsolete (i) as a result of a change in Applicable Law, regulation or tariff of general application, or imposition by FERC or any other Governmental Entity having or claiming jurisdiction over the Facility Lessee, or the Facility of any conditions or requirements including requiring significant capital improvement to such Unit or (ii) for any other reason; *provided, however*, that if both Units are obsolete under this clause (a), the Facility Lessee may not terminate this Facility Lease with respect to one Unit unless (x) it also terminates this Facility Lease with respect to the other Unit, or (y) the Owner Participant consents to such partial termination; or

(b) the Facility is surplus to the Facility Lessee's needs or is no longer useful in its trade or business, including, as a result of (x) a change in the markets for the wholesale purchase and/or sale of energy or (y) any material abrogation of power purchase or sale agreements.

No termination of this Facility Lease pursuant to this Section 14.1 shall become effective unless the conditions set forth in Section 14.5 hereof and thereof are satisfied.

*Section 14.2. Solicitation of Offers.* If the Facility Lessee shall give the Owner Lessor notice pursuant to Section 14.1 and the Owner Lessor shall not have elected to retain the Owner Lessor's Interest with respect to the Facility or such Unit, as the case may be, pursuant to Section 14.3 hereof, the Facility Lessee shall, as non-exclusive agent for the Owner Lessor, use its commercially reasonable efforts to obtain bids and, subject to Section 14.5 hereof, sell such Owner Lessor's Interest on the Obsolescence Termination Date, all of the proceeds of which will be for the account of the Owner Lessor; *provided* that so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the proceeds of such sale shall be paid directly to the Lease Indenture Trustee. The Owner Lessor shall also have the right, but no obligation, to obtain bids for the sale of such Owner Lessor's Interest either directly or through agents other than the Facility Lessee. At least 90 days prior to the Obsolescence Termination Date the Facility Lessee shall certify to the Owner Lessor and the Lease Indenture Trustee each bid or offer, the amount and terms thereof and the name and address of the party (which shall not be the Facility Lessee, any Affiliate or any third party with whom it or an Affiliate has an arrangement to use or operate the Facility or such Unit, as the case may be, to generate power for the benefit of the Facility Lessee or such Affiliate after the termination of this Facility Lease with respect to the Facility or such Unit, as the case may be) submitting such bid or offer.

*Section 14.3. Right of Owner Lessor to Retain Unit.* The Owner Lessor may irrevocably elect to retain, rather than sell, the Owner Lessor's Interest with respect to the Facility or such Unit, as the case may be, by giving notice to the Facility Lessee at least 90 days prior to the Obsolescence Termination Date; *provided, however*, that the Owner Lessor may not elect to retain the Facility unless it shall have provided the Facility Lessee with financial assurance reasonably satisfactory to the Facility Lessee that it will satisfy all of its payment obligations under this Section 14. If the Owner Lessor elects to retain such Owner Lessor's Interest pursuant to this Section 14.3, on the Obsolescence Termination Date (x) the Facility Lessee shall pay to the Owner Lessor (a) all Supplemental Lease Rent with respect to the Facility or such Unit, as the case may be, (including all reasonable out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant, the Lease Indenture Trustee and the Pass Through Trustees (excluding the fees and costs of any broker unless engaged by the Facility Lessee on the Owner Lessor's behalf) and all sales, use, stamp, ad valorem, rental, license value added, property and other Taxes required to be indemnified by the Facility Lessee pursuant to Section 9.2 of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 14.3 due and payable on such Obsolescence Termination Date, (b) any unpaid Periodic Lease Rent (or, in connection with a termination of a Renewal Lease Term, Renewal Lease Rent) with respect to the Facility or such Unit, as the case may be, due before such Obsolescence Termination Date, but shall not be required to pay Termination Value with respect to the Facility or such Unit, as the case may be, plus (c) any premium, if any, due on the portion of the Lessor Notes being prepaid pursuant to this Section 14. All Rent payments under this Section 14.3 shall, to the extent required by Section 3.5(a), be made to the Lease Indenture Trustee. Upon payment of all sums required to be paid pursuant to this Section 14.3, (i) Periodic Lease Rent and Renewal Lease Rent with respect to the Facility or such Unit, as the case may be, shall cease to accrue, (ii) the Facility Lessee's obligations under Sections 6, 7, 8, 11 and 12 with respect to the Facility or such Unit, as the case may be, shall terminate, (iii) the Facility Lessee shall cease to have any other liability to the Owner Lessor hereunder or under the other Operative Documents with respect to the Facility or such Unit, as the case may be, except for Supplemental Lease Rent and other obligations (including those under Sections 9.1 and 9.2 of the Participation Agreement

and the Tax Indemnity Agreement) surviving pursuant to the express terms of any Operative Document, (iv) the Owner Lessor shall pay the portion of the outstanding principal and accrued interest on the Lessor Notes relating to the Facility or such Unit, as the case may be, pursuant to Section 2.10(a) and (e) of the Lease Indenture, (v) this Facility Lease shall terminate with respect to the Facility or such Unit, as the case may be, (vi) the Owner Lessor shall, at the Facility Lessee's cost and expense, execute and deliver to the Facility Lessee a release and termination of this Facility Lease with respect to the Facility or such Unit, as the case may be, and in the case of a termination with respect to a Unit, such Unit shall no longer be deemed to be part of the Facility, (vii) the Facility Lessee will return the Owner Lessor's Interest related to the Facility or such Unit, as the case may be, to the Owner Lessor in accordance with Section 5.1, and (viii) the Owner Lessor shall use all reasonable efforts to cause the Lease Indenture Trustee to discharge the Lien of the Lease Indenture with respect to the Facility or such Unit, as the case may be, and to execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepaid, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee. It shall be a condition to the termination of this Facility Lease pursuant to this Section 14.3, that the Facility Lessee shall pay all amounts that it is obligated to pay under this Section 14.3.

*Section 14.4. Procedure for Exercise of Termination Option.* If the Owner Lessor has not elected to retain the Owner Lessor's Interest with respect to the Facility or such Unit, as the case may be, in accordance with Section 14.3 hereof, on the Obsolescence Termination Date the Owner Lessor shall sell the Owner Lessor's Interest in the Facility or such Unit, as the case may be, under this Section 14.4 hereof and Section 9.1 of the Site Lease and Sublease to the bidder or bidders (which shall not be the Facility Lessee, any Affiliate thereof or any third party with whom it or an Affiliate has an arrangement to use or operate the Facility or such Unit, as the case may be, to generate power for the benefit of the Facility Lessee or such Affiliate after the termination of this Facility Lease with respect to the Facility or such Unit, as the case may be), that shall have submitted the highest cash bid with respect to the Facility or Unit, as the case may be; *provided, however*, that prior to any sale or conveyance to any third party pursuant to this Section 14.4, the Facility Lessee shall have given the applicable notice, if any, required by the Exempt Facilities Agreement or obtained a waiver thereof. In addition, the Facility Lessee shall certify to the Owner Lessor, the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees that such buyer is not the Facility Lessee, any Affiliate thereof or any third party with whom it or an Affiliate has an arrangement to use or operate the Facility or such Unit, as the case may be, to generate power for the benefit of the Facility Lessee or such Affiliate after the termination of this Facility Lease with respect to the Facility or such Unit, as the case may be. On the Obsolescence Termination Date, the Facility Lessee shall pay to the Owner Lessor (a) the excess, if any, of Termination Value with respect to the Facility or such Unit, as the case may be, determined as of such Obsolescence Termination Date over the total sales price of the Owner Lessor's Interest retained by the Owner Lessor (net of the fees, commissions and costs of any broker engaged by the Facility Lessee or any Affiliate thereof on the Owner Lessor's behalf), plus (b) any unpaid Periodic Lease Rent or Renewal Lease Rent due before such Obsolescence Termination Date, plus (c) all amounts of Supplemental Lease Rent (including all reasonable out-of-pocket costs and expenses of the Owner Lessor, the Owner Participant, the Lease Indenture Trustee and the Pass Through Trustees (excluding the fees and costs of any broker unless engaged by the Facility Lessee on the Owner Lessor's behalf) and all sales, use,

stamp, ad valorem, rental, license, value added, property and other Taxes required to be indemnified by the Facility Lessee pursuant to Section 9.2 of the Participation Agreement associated with the exercise of the termination option pursuant to this Section 14 due and payable on such Obsolescence Termination Date, plus (d) any premium, if any, due on the portion of the Lessor Notes being prepaid pursuant to this Section 14. All Rent payments under this Section 14.4 shall, to the extent required by Section 3.5(a), be made to the Lease Indenture Trustee. Upon the payment of all sums required to be paid pursuant to this Section 14.4, (i) Allocated Rent with respect to the Facility or such Unit, as the case may be, shall cease to accrue and the corresponding obligation to pay Periodic Lease Rent shall cease, (ii) the Facility Lessee's obligations under Sections 6, 7, 8, 11 and 12 with respect to the Facility or such Unit, as the case may be, shall terminate, (iii) the Facility Lessee shall cease to have any other liability hereunder to the Owner Lessor hereunder or under the other Operative Documents with respect to the Facility or such Unit, as the case may be, except for Supplemental Lease Rent and other obligations (including Sections 9.1 and 9.2 of the Participation Agreement) surviving pursuant to the express terms of any Operative Document, (iv) the Owner Lessor will pay the portion of the outstanding principal and accrued interest on the Lessor Notes relating to the Facility or such Unit, as the case may be, payable pursuant to Section 2.10 of the Lease Indenture, (v) this Facility Lease shall terminate with respect to the Facility or such Unit, as the case may be, (vi) the Owner Lessor shall, at the Facility Lessee's cost and expense, execute and deliver to the Facility Lessee a release or termination of this Facility Lease with respect to the Facility or such Unit, as the case may be, and, in the case of a termination with respect to a Unit, such Unit shall no longer be deemed to be part of the Facility, (vii) the Owner Lessor will transfer (by an appropriate instrument of transfer in form and substance reasonably satisfactory to the Owner Lessor and prepared and recorded by and at the expense of the Facility Lessee) the Owner Lessor's Interest relating to the Facility or such Unit, as the case may be, under this Section 14.4, to the purchaser on an "as is", "where is" and "with all faults" basis, without representations or warranties other than a warranty as to the absence of Owner Lessor's Liens and a warranty from the Owner Participant as to the absence of Owner Participant's Liens, and (viii) the Owner Lessor shall execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepaid, filed and recorded (as appropriate) at the cost and expense of the Facility Lessee. Unless the Owner Lessor shall have elected to retain the Owner Lessor's Interest pursuant to Section 14.3 or the Owner Lessor with the consent of the Facility Lessee shall have entered into a legally binding contract to sell the Owner Lessor's Interest, the Facility Lessee may, at its election, revoke its notice of termination on at least 30 days' prior notice to the Owner Lessor, the Owner Participant and, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, the Lease Indenture Trustee and the Pass Through Trustees in which event this Facility Lease shall continue with respect to the Facility or such Unit, as the case may be; *provided, however*, that the Facility Lessee shall not be permitted to re-initiate a notice to terminate pursuant to Section 14.1 more than once in any five year period. The Owner Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Facility Lessee to obtain bids or otherwise take any action in arranging any such sale of the Owner Lessor's Interest other than, if the Owner Lessor has not elected to retain the Owner Lessor's Interest, to transfer the Owner Lessor's Interest in accordance with clause (vii) of this Section 14.4. It shall be a condition of the Owner Lessor's obligation to consummate a sale of the Owner Lessor's Interest that the Facility Lessee shall pay all amounts it is obligated to pay under this Section 14.4. If no sale shall occur on the

Obsolescence Termination Date, the notice of termination shall be deemed revoked and this Facility Lease shall continue with respect to the Facility or such Unit, as the case may be, in full force and effect in accordance with its terms (without prejudice to the Facility Lessee's right to exercise its rights under this Section 14).

*Section 14.5. Certain Conditions to Termination.* Anything to the contrary in this Section 14 notwithstanding, the Facility Lessee and the Owner Lessor agree for the benefit of the Lease Indenture Trustee (without relieving the Owner Lessor of any liability hereunder) that, so long as the Lien of the Lease Indenture shall not have been terminated or discharged, no termination pursuant to this Section 14 shall be effective and the Facility Lessee's rights and obligations under this Facility Lease with respect to the Unit referred to in the applicable notice of termination pursuant to Section 14.1 shall remain in full force and effect in all respects (regardless of whether the Owner Lessor shall elect to retain or sell the Owner Lessor's Interest in connection with such proposed termination) unless and until the Owner Lessor shall have paid the portion of the outstanding principal and accrued interest on the Lessor Notes with respect to the Facility or such Unit, as the case may be, payable pursuant to Section 2.10 of the Lease Indenture and the Facility Lessee shall have paid any Make-Whole Premium arising from a termination pursuant to clause (a)(ii) or (b) of Section 14.1 and all other amounts due under the Lease Indenture with respect thereto shall have been paid.

## SECTION 15. LEASE RENEWAL

*Section 15.1. First Wintergreen Renewal Lease Term.* Not earlier than forty-two (42) months prior to the expiration of the Basic Lease Term, unless a Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessee may deliver to the Owner Lessor notice (which notice may be in addition to a notice of the Facility Lessee's tentative interest in electing an FMV Renewal Lease Term under Section 15.3) of the Facility Lessee's tentative interest in renewing this Facility Lease for a term (the "First Wintergreen Renewal Lease Term") commencing on the day following the last day of the Basic Lease Term and ending on a date (a) as of which the sum of the number of years of the proposed First Wintergreen Renewal Lease Term and the Basic Lease Term is not more than the lesser of (x) 49 years, or (y) 75% of the estimated economic useful life of the Facility measured from the Closing Date, but determined by an Independent Appraiser (which Independent Appraiser shall be selected by the Facility Lessee and reasonably acceptable to the Owner Lessor) in accordance with the Appraisal Procedures not more than thirty-six (36) months before the end of the Basic Lease Term, and (b) as of which the estimated fair market value of the Facility determined, by such Independent Appraiser, subsequent to the Facility Lessee's tentative election of the First Wintergreen Renewal Lease Term (but not earlier than thirty-six (36) months prior to the expiration of the Basic Lease Term), shall equal or exceed twenty percent (20%) of the Purchase Price (or, if this Facility Lease has been terminated with respect to one Unit, the Unit Purchase Price of the remaining Unit) (without taking into account inflation or deflation subsequent to the Closing Date). Unless the Facility Lessee shall have irrevocably elected to renew this Facility Lease for an FMV Renewal Lease Term under Section 15.3, and provided that no Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing on such notice date, on or prior to eighteen (18) months before the expiration of the Basic Lease Term, the Facility Lessee may deliver to the Owner Lessor a further notice irrevocably electing to renew this Facility Lease for the First Wintergreen Renewal Lease Term



determined as aforesaid and, subject to neither a Significant Lease Default nor a Lease Event of Default having occurred and continuing on the last day of the Basic Lease Term, the First Wintergreen Renewal Lease Term shall thereupon take effect as provided herein.

*Section 15.2. Second Wintergreen Renewal Lease Term.* Not earlier than forty-two (42) months prior to the expiration of the First Wintergreen Renewal Lease Term, unless a Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessee may deliver to the Owner Lessor notice (which notice may be in addition to a notice of the Facility Lessee's tentative interest in electing an FMV Renewal Lease Term under Section 15.3) of the Facility Lessee's tentative interest in renewing this Facility Lease for a term (the "Second Wintergreen Renewal Lease Term" and together with the First Wintergreen Renewal Lease Term, the "Wintergreen Renewal Lease Terms") commencing on the day following the last day of the First Wintergreen Renewal Lease Term and ending on a date (a) as of which the sum of the number of years of the proposed Wintergreen Renewal Lease Terms and the Basic Lease Term is not more than the lesser of (x) 49 years, or (y) 75% of the estimated economic useful life of the Facility measured from the Closing Date, but determined by an Independent Appraiser (which Independent Appraiser shall be selected by the Facility Lessee and reasonably acceptable to the Owner Lessor) in accordance with the Appraisal Procedures not more than thirty-six (36) months before the end of the First Wintergreen Renewal Lease Term, and (b) as of which the estimated fair market value of the Facility determined, by such Independent Appraiser, subsequent to the Facility Lessee's tentative election of the Second Wintergreen Renewal Lease Term (but not earlier than thirty-six (36) months prior to the expiration of the First Wintergreen Renewal Lease Term), shall equal or exceed 20% of the Purchase Price (or, if the Facility Lease has been terminated with respect to one Unit, the Unit Purchase Price of the remaining Unit) (without taking into account inflation or deflation subsequent to the Closing Date). Unless the Facility Lessee shall have irrevocably elected to renew this Facility Lease for a FMV Renewal Lease Term under Section 15.3, and provided that no Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing on such notice date, on or prior to eighteen (18) months before the expiration of the First Wintergreen Renewal Lease Term, the Facility Lessee may deliver to the Owner Lessor a further notice irrevocably electing to renew this Facility Lease for the Second Wintergreen Renewal Lease Term determined as aforesaid and, subject to neither a Significant Lease Default nor a Lease Event of Default having occurred and continuing on the last day of the Basic Lease Term, the Second Wintergreen Renewal Lease Term shall thereupon take effect as provided herein.

*Section 15.3. Fair Market Value Renewal Lease Terms.* Not earlier than forty-two (42) months prior to the expiration of the Basic Lease Term, the First Wintergreen Renewal Lease Term, the Second Wintergreen Renewal Lease Term, or any other Renewal Lease Term, unless a Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessee may deliver to the Owner Lessor notice (which notice may be in addition to a notice of the Facility Lessee's tentative interest in electing the First Wintergreen Renewal Lease Term or the Second Wintergreen Renewal Lease Term) of the Facility Lessee's tentative interest in renewing this Facility Lease for a term (each such term, a "FMV Renewal Lease Term") commencing on the day following the last day of the Basic Lease Term or a Renewal Lease Term otherwise expiring and extending for no less than two years and no more than five years; *provided* that, the Facility Lease Term shall not exceed 49 years; *provided*



*further* that unless such FMV Renewal Lease Term extends to the end of the useful life of such Units, no such FMV Renewal Lease Term shall extend beyond the date that is three (3) years prior to the end of the useful life of such Units (as set forth in the most recent appraisal obtained pursuant to Section 4.1(o) of the Participation Agreement, Section 15.1 or 15.2 of this Facility Lease or Section 2.3(a) or (b) of the Site Lease and Sublease). Unless the Facility Lessee shall have irrevocably elected to renew this Facility Lease for a Wintergreen Renewal Lease Term pursuant to Sections 15.1 or 15.2 (it being understood that the exercise by the Facility Lessee of its right to renew this Facility Lease at the end of the Basic Lease Term or at the end of the First Wintergreen Renewal Lease Term pursuant to Sections 15.1 or 15.2 hereof, respectively, shall not impair its right to renew this Facility Lease at any time thereafter pursuant to this Section 15.3), and provided that no Lease Bankruptcy or Payment Default or Lease Event of Default shall have occurred and be continuing on any such notice date or on the date of expiration of the Basic Lease Term or the Renewal Lease Term immediately preceding such FMV Renewal Lease Term, as the case may be, on or prior to eighteen (18) months before the expiration of the existing Basic Lease Term or the relevant Renewal Lease Term as the case may be, the Facility Lessee may deliver to the Owner Lessor a further notice irrevocably electing to renew this Facility Lease for the FMV Renewal Lease Term tentatively elected as aforesaid and, subject to neither a Significant Lease Default nor an Lease Event of Default having occurred and continuing on the last day of the Basic Lease Term or the Renewal Lease Term immediately preceding the such FMV Renewal Lease Term, as the case may be, the FMV Renewal Lease Term shall thereupon take effect as provided herein.

*Section 15.4. Renewal Lease Rent for the Renewal Lease Terms.*

(a) Renewal Lease Rent shall be paid on each November 8 and May 8, in arrears, during each Renewal Lease Term. The installment of Renewal Lease Rent for the Facility payable on each such Rent Payment Date during the Wintergreen Renewal Lease Terms shall be determined as follows:

(i) for each year during the First Wintergreen Renewal Lease Term, Renewal Lease Rent shall be equal to the lesser of (i) the Fair Market Rental Value for the Facility, and (ii) during the initial six years, 75% of the average Periodic Lease Rent during the Basic Lease Term, and thereafter, 50% of the average Periodic Lease Rent during the Basic Lease Term, multiplied in each case if this Facility Lease has been terminated with respect to one Unit pursuant to Section 10 or 14 by the Unit Percentage for the remaining Unit; and

(ii) for each year during the Second Wintergreen Renewal Lease Term, Renewal Lease Rent shall be equal to the lesser of (i) the Fair Market Rental Value for the Facility, and (ii) for any portion thereof prior to the sixth anniversary of the Expiration Date, 75% of the average Periodic Lease Rent during the Basic Lease Term, and thereafter, 50% of the average Periodic Lease Rent during the Basic Lease Term, multiplied in each case if this Facility has been terminated with respect to one Unit pursuant to Section 10 or 14 by the Unit Percentage for the remaining Unit.